



05 MAY 2003

Klaus P. Stoffel  
Cohen, Pontani, Lieberman & Pavane  
Suite 1210  
551 Fifth Avenue  
New York, NY 10176

In re Application of :  
GLEIXNER :  
Application No.: 09/890,823 :  
PCT No.: PCT/DE99/04126 :  
Int. Filing Date: 29 December 1999 : DECISION on PETITION  
Priority Date: 05 February 1999 :  
Attorney Docket No.: 4595-22PUS :  
For: DISPLACEMENT AND/OR ANGLE SENSOR :  
COMPRISING A MEANDERING MEASURING :  
WINDING :

The above-identified application is before the Office of PCT Legal Administration for consideration of issues arising under 35 U.S.C. 371 and applicant's petition filed on 11 October 2001 in the United States Patent and Trademark Office. The initial papers filed 06 August 2001 were processed as a filing under 35 U.S.C. 111(a). For the reasons discussed below, the application will be converted to a national stage filing of PCT/DE99/04126.

### **BACKGROUND**

On 29 December 1999, applicants filed international application PCT/DE99/04126 which claimed a priority date of 05 February 1999. A Demand was filed with the International Preliminary Examining Authority prior to the expiration of 19 months from the priority date, and as a result the deadline for payment of the basic national fee was extended to expire 30 months from the priority date, i.e. 06 August 2001 (05 August 2001 was a Sunday).

On 06 August 2001, applicants filed the present application. The application papers filed therewith included a transmittal letter (Form PTO-1390), a check to cover the basic filing fee of \$430 and an assignment recording fee of \$40, an executed declaration, and English translation of the international application. The transmittal letter referred to 35 U.S.C. 371 or "national stage"

and the declaration referenced the PCT international application. However, the application was processed as a filing under 35 U.S.C. 111(a).

### **DISCUSSION**

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in pertinent part,:

To clearly indicate an international application is being filed under 35 U.S.C. 371 the applicant should use the "Transmittal Letter for United States Designated Office" (Form PTO-1390) as the transmittal letter.

Alternatively, one of the following indications may be used:

1) the applicant shall clearly state in the transmittal or cover letter that he or she is filing under 35 U.S.C. 371 or entering the national stage under PCT; or

2) the applicant clearly identifies in the oath or declaration the specification to which it is directed by referring to a particular international application by PCT Serial Number and International Filing Date and that he or she is executing the declaration as, and seeking a U.S. Patent as, the inventor of the invention described in the identified international application.

The transmittal letter contained specific instructions that this was a submission under 35 U.S.C. 371. Furthermore, the declaration, also filed 06 August 2001, clearly identifies in the declaration the specification to which it is directed by referring to international application PCT/DE99/04126. This is a clear indication that the papers were filed under 35 U.S.C. 371. Therefore, the application papers filed 06 August 2001 should have been processed under 35 U.S.C. 371, not 35 U.S.C. 111.

Accordingly, the filing receipt issued on this application, which did not indicate filing under 35 U.S.C. 371, was in error and is hereby **vacated**.

### **CONCLUSION**

For the reasons above, the application will be converted from a 35 U.S.C. 111 filing to a national stage application under 35 U.S.C. 371.

This application has an international filing date of 29 December 1999 under 35 U.S.C. 363 and a 35 U.S.C. 371(c) date of 06 August 2001

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision, that is, (1) for mailing of a Notification of Acceptance of Application (Form PCT/DO/EO/903) and (2) Official Filing Receipt which identifies this application as a national stage application of PCT/DE99/04126.

Thereafter, the application will be forwarded to Art Unit 2862.



Cynthia M. Kratz  
Attorney Advisor  
Office of PCT Legal Administration

Telephone 703-306-5467  
Fax: 703-308-6459